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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,227	06/05/2006	Chikara Masuta	283985USOX PCT	7865
22850	7590	03/11/2009		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER ZHENG, LI	
			ART UNIT 1638	PAPER NUMBER
			NOTIFICATION DATE 03/11/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/562,227

Applicant(s)

MASUTA ET AL.

Examiner

LI ZHENG

Art Unit

1638

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1.4.6 and 7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1.4.6 and 7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1, 4, 6-7 are pending
2. Applicant's cancellations of claims 2-3 and 5, as well as amendments to claims 1, 4 and 6-7 filed on 11/26/2008 are acknowledged.
Claims 1, 4, 6-7 are examined on the merits.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. The rejections and objections that are not recited in this Office Action are considered as being withdrawn.

Claim Rejections - 35 USC § 103

5. Claims 1, 4 and 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soards et al. (2002, MPMI 15:647-653) in view of Roossinck et al. (1999, J. of Virology 73:6752-6758).

The claim is drawn to a cucumber mosaic virus Y strain (CMV-Y) viral vector wherein the region from *Stu*I site to stop codon of the 2b ORF of pCY2 is deleted; or wherein SEQ ID NO: 1 is introduced into the *Stu*I-AvrII region of pCY2; or wherein the foreign gene is inserted into the *Stu*I site.

Soards et al. teach a cucumber mosaic virus Fny strain (CMV-Fny) viral vector wherein the 2b is deleted including the region from *Stu*I site to stop codon of the 2b ORF of pCY2 of instant application.

Soards et al. do not teach CMV-Y. Soards et al. do not teach SEQ ID NO: 1 or the limitation that the foreign gene is inserted into the *Stu*I site.

Roossinck et al. teach that CMV-Y and CMV-Fny are closely related and both belong to subgroup 1A (page 6755, Figure 2).

However, it would have obvious for a person with ordinary skill in the art to modify the vector of Soards et al. by using the CMV-Y strain resulting in instant invention with reasonable expectation of succession, given the teaching of Roossinck et al. that CMV-Y and CMV-Fny are closely related and both belong to subgroup 1A.

Although Soards et al. do not teach SEQ ID NO: 1, it is considered merely an obvious design choice since SEQ ID NO:1 is simply a multicloning sites containing restriction enzymes recognition sites for *Stu*I, *Mlu*I and *Sna*BI.

Although Soards et al. do not teach the limitation that the foreign gene is inserted into the *Stu*I site, it would have been obvious to replace the 2b gene with any sequence of interest given the teaching of Soards et al. that the 2b deletion mutant that encodes a

truncated 2a protein can accumulate to the similar level of virus as the CMV possessing the wild-type RNA2 sequence (page 649, 3rd paragraph of right column).

Thus the claimed invention would have been *prima facie* obvious as a whole to one of ordinary skill in the art at the time it was made, especially in the absence of evidence to the contrary.

Summary

No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Li Zheng whose telephone number is 571-272-8031. The examiner can normally be reached on Monday through Friday 9:00 AM - 5:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Elizabeth F. McElwain/

Primary Examiner, Art Unit 1638

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